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The 1975 Constitution of the People's Republic of China

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ON JANUARY 17, 1975, the First Session of the Fourth National People's Congress of the People's Republic of China adopted its newly revised state constitution.¹ According to Chang Chun-Chiao, who was chosen to present the draft constitution to the Congress, "the work of revising the Constitution has been going on for nearly five years"; "it was born out of repeated discussions among the people of all our nationalities and is the outcome of combining the ideas of the leading organizations and those of the masses."²

The new constitution seems to be unusually simple in its style and organization. It reaffirms basic principles enunciated in the 1954 Constitution and rectifies the Great Leap Forward Movement based on the General Line of Socialist Construction of 1958 and the Great Proletarian Cultural Revolution which started in 1966.³ Also enshrined in it are the basic precepts and policies of the late Mao Tsetung to honor the promise of the 1973 Constitution of the Communist Party of China⁴ and to practice the revolutionary ideology of Marxism-Leninism-Mao Tsetung thought.⁵ Important revisions reported by Chang Chun-Chiao include: 1) strengthening of the proletarian dictatorship; 2) the decla-

1. English and Chinese texts of the 1975 Constitution of the People's Republic of China [hereinafter cited as the 1975 Constitution] may be found in *Pei-ching shih fan ta hsieh wei yü hsi chiao shih kung nung ping hsieh yüan, CHUNG-HUA JEN MIN KUNG HO KUO HSIEN FA* (The Constitution of the People's Republic of China 1975) from which an English text is reproduced as an appendix. An English text may also be found in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* (A. Blaustein & G. Flanz ed. 1975).

2. Chang Chun-Chiao, *Report on the Revision of the Constitution* in *CONSTITUTION OF THE COUNTRIES OF THE WORLD*, *supra* note 1.

3. *Id.*

4. An English text of the Constitution of the Communist Party of China, adopted by the Tenth National Congress of the Communist Party of China on August 28, 1973, may be found in 16 *PEKING REV.* 26 (1973).

5. *Supra* note 2, at 49.

ration of the leadership of the Communist Party of China over state organs; 3) the declaration of the goal of complete "democratic centralism;" 4) the presentation of new patterns of ownership of the means of production; and 5) the enunciation of an anti-hegemony policy in international relations.⁶ The revision of the Constitution, again according to Chang Chun-Chiao, is "to sum up our new experience, consolidate our new victories and express the common desire of the people of our country to persist in continued revolution under the dictatorship of the proletariat."⁷ In general, the salient characteristics of the new constitution are the well-defined relationship between the Communist Party and the state, provisions dealing with state organs in simple style, and a good number of articles allocated to stating legal rules and to pronouncing political principles.⁸

The purposes of this study are twofold. First, China's growing ideological, diplomatic, political, economic, and military impact on the rest of the world alone provide us with motivation for the study of the Chinese constitution. Furthermore, the People's Republic of China's entry into the United Nations in 1971 adds a new dimension to the role of China in the world community. It is important that the world legal community better understand how the government and legal system of the world's most populous nation function. Second, the new Constitution is an interesting document for comparative consti-

6. *Id.* at 51-57.

7. *Id.* at 48.

8. For an analysis of the 1975 Constitution, see Alexandrov, *An Analysis of China's New Constitution*, 27 CURRENT DIGEST OF THE SOVIET PRESS 1 (1975); Ardant, *La Constitution de la République Populaire de Chine du 17 Janvier 1975*, 92 REVUE DU DROIT PUBLIC ET DE LA SCIENCE POLITIQUE EN FRANCE ET A L'ETRANGER 477 (1976); Asai, *Chugoku shin kenpo no tokushoku to modaiden* (Characteristics and Issues of the New Constitution of China), 237 THE HOGAKU SEMINAR 8 (1975); Chang, *The Special Features of Communist China's 1975 Constitution*, 11 ISSUES AND STUDIES 2 (1975); Focsaneanu, *Révision Constitutionnelle en République Populaire de Chine*, 40 POLITIQUE ÉTRANGÈRE 241 (1975); Fukushima, *Kakumei chugoku no konpon daiho* (Fundamental Law of Revolutionary China) 47 HORITSU JIHO 77 (1975); Tao-tai Hsia and Haum, *THE 1975 REVISED CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA* (1975); Liang Hsiao & Lu Pin, *New Constitution: Fundamental Charter for Consolidating the Dictatorship of the Proletariat*, 18 PEKING REVIEW 10 (1975); Ch'ing-po Liu, *A Comparison of Peiping's New Constitution and Constitutional Theory*, 11 ISSUES AND STUDIES 13 (1975); Rowe, *The P.R.C.'s Constitutions and the Philosophy of Constitutionalism*, 11 ISSUES AND STUDIES 2 (1975); Sato, *Chugoku shin kenpo o yomu* (Perusing the New Constitution of China), 582 JURISUTO 98 (1975); Tang, *A Revolutionary Charter: The 1975 Constitution of the People's Republic of China*, 1 ASIAN THOUGHT AND SOCIETY: AN INTERNATIONAL REVIEW 33 (1976); Tche-Hao Tsien, *Les Traits Particuliers de la Nouvelle Constitution Chinoise*, 27 REVUE INTERNATIONALE DE DROIT COMPARÉ 349 (1975); Yokota, *Chukajinmin kyowakoku shin kenpo o meguru jakan no mondai* (The New Constitution of the People's Republic of China and its Problems) 42 KYUSHU DAIGAKU HOSEI KENKYU 383 (1975).

tutional legal scholars to examine closely. The official policy of the People's Republic of China is to "rely mainly on our own efforts while making external assistance subsidiary," and to "build socialism independently and with the initiative in our own hands, through self reliance"⁹ This policy based on self-reliance also influences the creation of a new legal order best suited for their own national needs by refusing to import foreign legal institutions blindly. Thus the new Constitution embodies the theory of continued revolution based on the presumed existence of class struggle in the Chinese socialist society,¹⁰ the theory which considers law as a means of implementing state policies,¹¹ and the principle of "mass line" developed through Chinese revolutionary experience since 1931.¹² These theories and principles are the outcome of Chinese socialist innovation and its unique approaches for coping with the basic problems of Chinese socialist society. It is by no means an easy task for Western legal thinkers and practitioners to comprehend fully these Chinese approaches to human problems. It will surely take us years of study to understand these approaches.¹³

In order to gain a better understanding of the fundamental charter of the People's Republic of China, this article will discuss five areas of the new Constitution: the preamble, general principles, the structure of the state, fundamental rights and duties of citizens, and the justice delivery system. In particular, it will highlight significant changes that depart from the provisions of the 1954 Constitution.

I. HISTORY

The embryo of the 1975 Constitution is to be found in "General Principles of the Constitution of the Chinese Soviet Republic" of 1931. On November 7, 1931, a sizable area in Kiangshi, Mainland China, occupied by the Communists, proclaimed a Chinese Soviet Republic and adopted a 17 article Constitution.¹⁴ This document was written

9. *Supra* note 1, preamble.

10. Fukushima, *supra* note 8, at 80.

11. GENDAI CHUGOKU HO NO KIHON KOZO, *Azja keizai kenkyusho* 37 (N. Ubukata, ed. 1973); Asai, *Chugoku ho*, GAIKOKUHO NO SHIRABEKATA, *Tokyo taigaku shupankai*, 305, 310 (H. Tanaka, ed. 1975).

12. Fukushima, *supra* note 8, at 78.

13. As to Chinese Socialist approaches to dispute resolution, see Li, *The Legal System of the People's Republic of China and Problems of Equity*, in *EQUITY IN THE WORLD'S LEGAL SYSTEM: A COMPARATIVE STUDY* 519-538 (R. Newman, ed. 1973).

14. Shao-Chuan Leng, *JUSTICE IN COMMUNIST CHINA: A SURVEY OF THE JUDICIAL SYSTEM OF THE CHINESE PEOPLE'S REPUBLIC* 3 (1967); Hsia & Haum, *Introduction: People's Democratic Republic of China in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD*, *supra* note 1.

to promote the democratic dictatorship of the proletariat and peasantry in the Soviet districts and to secure the triumph of the dictatorship throughout China.¹⁵ Following their seizure of power in mainland China in 1949, the Communists sponsored the Common Program of the Chinese People's Political Consultative Conference which was adopted at its First Plenary Session on September 29, 1949.¹⁶ This conference was organized with the Democratic United Front. It sought to unite all nationalities, classes, political parties, mass organizations and prominent public figures without party affiliation, and the Chinese abroad. Deeply seated in Mao's thesis of the "people's democratic dictatorship," the Common Program consists of a preamble and 60 articles under 7 chapter headings designed to transform Mainland China into the "Republic of the People's Democratic Dictatorship."¹⁷

After the establishment of the People's Republic of China on October 1, 1949, the First Session of the First National People's Congress adopted the 1954 Constitution which reaffirmed Chinese socialist revolutionary tradition.¹⁸ The enactment of the 1954 Constitution coincided with the second year of the first five year plan. Although in general patterned after the 1936 U.S.S.R. Constitution, it contained such principles of Chinese origin as "Democratic Centralism" and "mass line."¹⁹ The Constitution established the system of the People's Democratic Dictatorship to accomplish step by step "the Socialist transformation of agriculture, handicrafts and capitalist industry and commerce . . . to bring about the Socialist industrialization of the country . . . for planned economic construction and gradual transition to Socialism."²⁰

Toward the end of 1960, it became apparent that revision of the 1954 Constitution was inevitable in light of new political and ideological developments since 1954. However, it was not until 1970 that a revision of the Constitution was in progress in mainland China. The "Draft of the Revised Constitution of the People's Republic of China,"

15. Shao-Chuan Leng, *supra* note 14 at 1-10; Hsia & Haum, *supra* note 14 at 2-4.

16. Hsia & Haum, *supra* note 14 at 10-11.

17. *Id.* An English text of the *Common Program of the Chinese People's Political Consultative Conference* may be found in *FUNDAMENTAL LEGAL DOCUMENTS OF COMMUNIST CHINA* 34 (A. Blaustein, ed. 1962).

18. An English text of the 1954 Constitution of the People's Republic of China [hereinafter referred to as the 1954 Constitution] may be found in 2 *CONSTITUTIONS OF NATIONS* 261 (A. Peaslee 1966). For a discussion of the 1954 Constitution, see W. TUNG, *THE POLITICAL INSTITUTIONS OF MODERN CHINA* 259 (1968); Houn, *Constitution and Government in China: A HANDBOOK* 221 (Yuan-Li Wu, ed. 1973).

19. As to the adoption of these two principles by the Vietnamese and North Korean constitutions, see the Constitution of the Democratic Republic of Vietnam (1960) arts. 4 and 6; and the Constitution of North Korea (1972) arts. 9 and 12.

20. *Supra* note 18, preamble.

30 articles in total, was later made public by intelligence sources of the Republic of China (Taiwan).²¹ The draft was filled with personal references to Mao Tsetung and Lin Piao; it described Mao Tsetung as "the supreme commander of the whole nation and the whole army,"²² for example. The 1975 Constitution refers not to him directly, however, but to "Mao Tsetung thought."²³

II. PREAMBLE

The preamble consists of eight paragraphs to explain the purposes of the Constitution. The first and second stress the progress made under the leadership of the Communist Party in China during the past two decades or so preceding the promulgation of the new Constitution.²⁴ The third and fourth paragraphs emphasize the need for continued revolution adhering to Marxism-Leninism-Mao Tsetung thought. A marked difference between the 1954 and the 1975 Constitutions is that the latter affirms the theory of transitional class struggle which ignited the Cultural Revolution; it appeals to the Chinese people to fight "the danger of capitalist restoration" in the future.²⁵ The major task of the constitutional revision is to reflect in the document the theory of continued revolution under the proletarian dictatorship. This thesis is reiterated by Chang Chun-Chiao:

In the historical period of socialism, there are still classes, class contradictions and class struggle, there is the struggle between the socialist road and the capitalist road, and there is the danger of capitalist restoration. We must recognize the protracted and complex nature of this struggle. . . . Otherwise a socialist country like ours will turn into its opposite and degenerate, and a capitalist restoration will take place. . . .²⁶

The continued revolution means continual political and ideological revolution under proletarian dictatorship. The Constitution, for instance, prescribes that the proletariat must exercise all-round dictatorship over the bourgeoisie in the superstructure including all spheres of culture.²⁷ This provision means the continued socialist revolution in the ideational institutions of the society. For this purpose, the Constitution also guarantees four new means of carrying out the socialist

21. Hsia & Haum, *supra* note 14 at 22.

22. *Id.* at 22-27.

23. *Supra* note 1, art. 2, para. 2; art. 11, para. 11.

24. *Id.* preamble, paras. 1, 2.

25. *Id.* paras. 3, 4.

26. *Supra* note 2 at 49. (Chang quotes Mao here.)

27. *Supra* note 1, art. 12.

revolution, i.e., speaking out freely, airing views fully, holding great debates, and writing large character posters.²⁸ At the same time, the Constitution proclaims that the support of the socialist system is the fundamental right and duty of citizens.²⁹

The fifth paragraph of the preamble to the Constitution presents at least four means for enhancing Chinese socialism.³⁰ First, the new Consitution subscribes to a revolutionary united front instead of the people's democratic united front. The latter front was adopted by the Common Program of the Chinese People's Political Consultative Conference of 1949³¹ and the 1954 Constitution.³² The use of "revolutionary" instead of "People's Democratic" is perhaps indicative of the ideological purification process in that the present united front does not need non-revolutionary alliances. Second, people are to distinguish correctly "contradictions among the people from those between ourselves and the enemy and correctly handle them."³³ This passage refers to two different types of contradictions: contradictions between friends and the enemy and those among the people themselves. The former are the antagonistic contradictions which could be solved by the dictatorship, while the latter, generally speaking, are contradictions among the people whose basic interests are identical. In general, these contradictions could be solved by persuasion and education.³⁴ Mao Tsetung has laid down a series of theories, principles, and policies for correctly handling these contradictions.³⁵ Third, the following three great revolutionary movements are to be implemented: class struggle, the struggle for production, and scientific experiment.³⁶ Fourth, building of socialism is to proceed with the spirit of self-reliance.³⁷

The last paragraph of the preamble deals with foreign relations, which are to be based on the following five principles: "mutual respect

28. *Id.* art. 13.

29. *Id.* art. 26.

30. *Id.* preamble, para. 5.

31. *Common Program of the Chinese People's Political Consultative Conference*, *supra* note 17, preamble.

32. *Supra* note 18, preamble.

33. *Supra* note 1, preamble.

34. J. TOWNSEND, *POLITICAL PARTICIPATION IN COMMUNIST CHINA* 69 (1967).

35. Cheng Yueh, *Adhere to the Party's Basic Line — Studying On the Correct Handling of Contradictions Among the People* 19 PEKING REV. 5 (1976). See also MAO TSE-TUNG, 2 *SELECTED WORKS* 297 (1954); Mao Tse-tung, *On the People's Democratic Dictatorship*, in 4 *SELECTED WORKS* 411-24 (1961); Chin Heng, *Inner-Party Struggle and Party Development*, 19 PEKING REV. 11, 12 (1976).

36. *Supra* note 1, preamble, para. 5.

37. *Id.*

for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence."³⁸ A passage such as that proclaiming ". . . an indestructable friendship with the great Union of Soviet Socialist Republics and the People's Democracies. . . ." in the 1954 Constitution,³⁹ or a similar passage, is nowhere to be found in the new Constitution. The absence of such words of acknowledgment or friendship only formalizes the actual situation of the deteriorating relations between the two countries since the mid 1950s. The new preamble indeed goes further than a policy of neutrality toward the Soviet Union when it states that China will never become a superpower. This is an indirect reference to both the Soviet Union and the United States and heralds in constitutional form the new era of ideological struggle between China and the Soviet Union. This preliminary statement of foreign relations in the new Constitution is in line with the Constitution of the Communist Party of China which states that "the Communist Party of China upholds proletarian internationalism and opposes great-power chauvinism . . . to oppose the hegemonism of the two superpowers — the United States and the Soviet Union."⁴⁰

III. GENERAL PRINCIPLES

Fifteen of the thirty articles of the new Constitution are assigned to the chapter on general principles.⁴¹ Areas covered by general principles range from the revolutionary experience to direction for the future for the People's Republic of China. A perusal of these pronounced principles reveals that some are newly adopted⁴² while others have their origins in the previous constitutional documents. The new Constitution contains a number of interesting constitutional principles for comparative constitutional law specialists to study.

A. From People's Democratic State to Socialist State

The new Constitution proclaims that "the People's Republic of China is a socialist state of the dictatorship of the proletariat."⁴³ This provision replaces an article of the 1954 Constitution which declared

38. *Id.*

39. *Supra* note 18, preamble.

40. *Supra* note 4, chapter 1.

41. *Supra* note 1, arts. 1-15.

42. *Id.* arts. 2, 7, 9(1), 10-13.

43. *Id.* art. 1.

that "the People's Republic of China is a people's democratic state."⁴⁴ This proclaimed socialist state in the 1975 Constitution confirms the current state of Chinese socialism which developed from the people's democracy declared under the 1954 Constitution. Enunciation of a socialist state seems to follow the pattern set by the revision of a series of East European constitutions since 1960. They are the 1960 Czechoslovakian Constitution,⁴⁵ the 1965 Rumanian Constitution,⁴⁶ the 1968 East German Constitution,⁴⁷ the 1971 Bulgarian Constitution,⁴⁸ the 1972 Hungarian Constitution,⁴⁹ and the 1976 Polish Constitution.⁵⁰ The new Polish Constitution, for instance, declares that "the Polish People's Republic is a socialist state,"⁵¹ while the old Constitution states that "the Polish People's Republic is a state of people's democracy."⁵² Revision of constitutions in these countries since 1960 indicates the developmental stage of people's democracy and acknowledges the accomplishment of the so-called "socialist victory" under the assistance of the U.S.S.R.⁵³ The organization and contents of these East European constitutions resemble the 1936 U.S.S.R. Constitution, commonly known as the Stalin constitution.

An interesting question to be posed is why the phrase "of the dictatorship of the proletariat" was added to "socialist state" in the new Constitution. This phrase is in marked contrast to the 1936 U.S.S.R. Constitution which announces that "the Union of Soviet Socialist Republics is a socialist state of workers and peasant."⁵⁴ Granted the proletariat means workers and peasant, why was the word dictatorship

44. *Supra* note 18, art. 1.

45. USTAVA CESKOSLOVENSKE SOCIALISTICKE REPUBLIKY (Constitution) art. 1 (Czechoslovakia 1960). An English translation may be found in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD, *supra* note 1.

46. Constitution of the Socialist Republic of Romania (1965) art. 1.

47. Constitution of the German Democratic Republic (1968) art. 1(1).

48. KONSTITUTSIA NA NARODNATA REPLICA BULGARIA (People's Republic of Bulgaria 1971) art. 1(1).

49. Constitution of Hungary (1972) art. 2(1).

50. KONSTITUCJA (Constitution) 1976) art. 1(1) (Poland).

51. *Id.*

52. KONSTITUCJA (Constitution) art. 1(1) (Poland).

53. See, e.g., Constitution of Czechoslovakia, *supra* note 45, declaration; Constitution of the People's Republic of Bulgaria, *supra* note 48, preamble; Constitution of Hungary, *supra* note 49, preamble.

54. *Supra* note 18, art. 1. See also the new draft USSR Constitution, art. 1, which reads: "The Union of Soviet Socialist Republics is a socialist state of all the people, expressing the will and interests of the working class, the peasantry and the intelligentsia and of all the country's nations and nationalities." For an English translation of the new draft, see CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS (Novosti Press Agency Publishing House, Moscow, 1977).

added? The reason seems to be ideological. Perhaps China wishes to reaffirm its orthodox position of Marxism-Leninism by adding the word dictatorship, thus giving a warning to the revisionist theoretical approach to socialism.

B. Supremacy of the Communist Party

The new Constitution prescribes that "the Communist Party of China is the core of leadership of the whole Chinese people."⁵⁵ One can hardly miss the stress placed on the leading role of the Communist Party since such phrases as "the leadership of the Communist Party of China" or "led by the Communist Party of China" are repeated throughout the entire text of the Constitution.⁵⁶ In the 1954 Constitution the essential principle of the Chinese state was defined as popular sovereignty.⁵⁷ The National People's Congress, according to the old Constitution, was given the power to intervene in the work of the executive and the judicial organs as well.⁵⁸ However, the 1975 Constitution emasculates the principle of popular sovereignty by bestowing supreme power upon the Central Committee of the Chinese Communist Party.⁵⁹ The Constitution unequivocally spells out that the Communist Party leads and is above the state, the army,⁶⁰ and the people. It stipulates in precise language that "the National People's Congress is the highest organ of state power under the leadership of the Communist Party of China."⁶¹ The National People's Congress appoints and removes the Premier and members of the State Council upon the recommendation of the Central Committee of the Communist Party of China.⁶² In other words, the State Council is almost equal to the National People's Congress since they are both subordinate to the Communist Party. However, this change merely codifies what was already evident in the state affairs of the People's Republic of China. Thus, the party, not the people, is the ultimate source of all political power. Since the political party theoretically represents the interest of the

55. *Supra* note 1, art. 2, para. 1.

56. These phrases appear three times in the preamble to the 1975 Constitution and in arts. 2, 13, 15, 16, 26.

57. *Supra* note 18, art. 2.

58. *Id.* arts. 21, 27, 28.

59. As to the function of the Central Committee of the Communist Party, *see* Constitution of the Communist Party of China, *supra* note 4, arts. 8-9. *See also, supra* note 1, art. 17.

60. *Supra* note 1.

61. *Id.* art. 16, para. 1.

62. *Id.* art. 17.

people faithfully, this is not a change, at least in the eyes of the framers of the Constitution. It does rid the Constitution, however, of the concept of the political party and the people as separate and distinct entities.

In abolishing the office of the Chairman of the People's Republic of China, the Constitution legitimizes the long-standing vacuum created by the removal of Liu Shao-ch'i from that office. It should be noted that this assignment of the leadership role of the political party over the entire governmental structure is unparalleled in any constitution written heretofore. While the state constitutions of some communist countries include prominent references to the role of the Communist Party,⁶³ none gives this role the preeminence it receives under the Chinese Socialist Constitution. The ramifications of this assigned power are enormous. Since all state officials and organs derive their power from the National People's Congress under the new Constitution, it in effect places the Communist Party at the pinnacle of the state structure. Placing the armed forces directly under the party rather than under the National People's Congress creates an army of the party.⁶⁴ This specific affirmation of the party's control of the army reflects the recent concern that certain military leaders, i.e., Lin Piao, had become too powerful in the central leadership, and that the army had become too entrenched in all areas of national life. The implication

63. The 1971 Bulgarian Constitution, for instance, uses "Communist Party" only once throughout the entire text. Article 1 (II) states that "The guiding force in society and the state is the Bulgarian Communist Party." The phrase "Communist Party" again appears only once in the 1936 USSR Constitution. Its famous Article 26 guaranteeing citizens rights to organize pronounces that "... the most active and politically-conscious citizens in the ranks of the working class, working peasants and working intelligentsia voluntarily unite in the Communist Party of the Soviet Union, which is the vanguard of the working people in their struggle to build communist society and is the leading core of all organisations of the working people, both government and non-government." The 1977 USSR Constitution uses the phrase "Communist Party" twice in its preamble and it appears twice in its Article 6; it reads:

"The leading and guiding force of Soviet society and the nucleus of its political system, of all state organizations and public organizations, is the Communist Party of the Soviet Union. The CPSU exists for the people and serves the people.

The Communist Party, armed with Marxism-Leninism, determines the general perspectives of the development of society and the course of the home and foreign policy of the USSR, directs the great constructive work of the Soviet people, and imparts a planned, systematic and theoretically substantiated character to their struggle for the victory of communism.

All party organisations shall function within the framework of the Constitution of the USSR." CONSTITUTION (FUNDAMENTAL LAW) OF THE UNION OF SOVIET SOCIALIST REPUBLICS (Novosti Press Agency Publishing House, Moscow, 1977). This article gives the impression that the Russian announcement on the Communist Party in USSR state affairs is perhaps influenced by the 1975 Chinese Constitution.

64. *Supra* note 1, art. 15.

is that the leadership of the National People's Congress is not to be controlled by the military. Never before has a Constitution of a Communist ruled state been, through express emphasis on the instrumentality of the Communist Party, so clearly identified with the goal of the socialist revolution integrated into the process of revolution itself. The 1975 Constitution gives legal force to the party's basic line. The Communist-led revolution under the 1975 Constitution is to be conducted by the Communist Party with maximum use of state organs and personnel. More simply, the Communist-ruled Chinese state is to be governed by the Communist Party which in turn is to carry out the socialist revolution. What is the reason behind setting up the political party as the supreme instrumentality under the Constitution? Perhaps the answer is the current political exigency and the need for regimentation of the people based on a practical approach to promote the course of revolution.

C. Democratic Centralism and Mass Line

All state organs are to practice "democratic centralism" under the new Constitution⁶⁵ just as under the 1954 Constitution.⁶⁶ This general principle is also confirmed in the Constitution of the Communist Party of China which states that "the organizational principle of the party is democratic centralism."⁶⁷ All organs of the state are to practice centralism on the basis of democracy and democracy under central guidance. The Report on the Revision of the Constitution puts the principle of democratic centralism into perspective: "the dictatorship of the proletariat on the one hand exercises dictatorship over the enemy and on the other practices democratic centralism within the ranks of the people. Without ample democracy it is impossible to have a high degree of centralism and without a high degree of centralism it is impossible to build socialism."⁶⁸ A higher degree of centralism of state organs with "efficient and simple administration"⁶⁹ is to be achieved through ample democracy to advance the socialist revolution. Advancement of the ample democracy is to be carried out by means of debate, criticism, persuasion and education. To give fullest expression to

65. *Id.* art. 3. The new draft USSR Constitution, art. 3, also adopts the principle of democratic centralism. See *supra* note 63, at 20.

66. *Supra* note 18, art. 2, para. 2.

67. *Supra* note 4, art. 5. See also Chiang Hsueh-yuan, *Democratic Centralism in Party Committees*, 16 PEKING REV. 17 (1973).

68. *Supra* note 2, at 55-56.

69. *Supra* note 1, art. 11.

people's initiative, democracy is an important condition for bringing this initiative of the people into play. People's initiative originates from the mass of the people, and the party or state organ formulates policies based on people's initiatives and inputs. Formulated policies are taken back to the masses for execution and supervision. "Patient persuasion and education" are orchestrated until the masses are ready for "conscious and voluntary action."⁷⁰ This active political and ideological participation of the mass of the people in state affairs can best be characterized as mass line. Accordingly, the ranks of the people are assured of active participation in the socialist revolution. If ample democracy is needed for a high degree of centralism, the mass of the people are to be active freely in the party and the state organs to assure these freedoms so as to rely on maximum inputs and initiatives from the masses.

The genesis of mass line thinking can be traced to the 1954 Constitution. It prescribed that "all organs of state must rely on the masses of the people, constantly maintain close contact with them, heed their opinions and accept their supervision."⁷¹ A similar statement appears in the Constitution of the Chinese Communist Party, which urges the party to maintain "close ties with the masses and practicing criticism and self-criticism, . . . constantly listen to the opinions of the masses both inside and outside the party and accept their supervision . . ."⁷² The new Constitution does not use such a provision nor any similar passage. However, this does not mean that the principle of mass line was negated or relaxed in the new Constitution. Rather, the principle that all organs of the state must adhere to the mass line seems to have reached a *fait accompli* status. But, the principle is clearly expressed in at least two instances in the new Constitution. First, the Constitution specifically reminds the state organs and cadres to honestly study Marxism-Leninism-Mao Tsetung thought and to "maintain close ties with the masses and wholeheartedly serve the people."⁷³ Second, mass line style of work must prevail in procuratorial work and in trying cases.⁷⁴

The general principle enunciated under the 1954 Constitution that all state organs are to be attentive to the opinions of the mass of the people and to receive their supervision presupposes positively guaran-

70. J. TOWNSEND, *supra* note 34, at 72.

71. *Supra* note 18, art. 17.

72. *Supra* note 4, art. 5. See also Chiang Hsueh-yuan, *supra* note 67, at 17.

73. *Supra* note 1, art. 11, para. 1.

74. *Id.* art. 25, para. 3.

teeing the mass of the people the freedom of expressing their opinions. This principle is ostensibly reinforced through the experience of the Cultural Revolution. As stated earlier, the new Constitution guarantees four forms of freedoms, namely, speaking out freely, airing views fully, holding great debates, and writing large character posters.⁷⁵ The state is to insure the mass people "the right to use these forms to create a political situation in which there are both centralism and democracy, both discipline and freedom, both unity of will and personal ease of mind and liveliness, and so help consolidate the leadership of the Communist Party of China over the state and consolidate the dictatorship of the proletariat."⁷⁶ These four types of freedom are designed to promote a higher degree of democracy and ultimately consolidate the proletarian dictatorship. Freedom of expression guaranteed under the Constitution is an extension of the masses' right to participate in creating both democracy and centralism. Needless to say, freedom of expression is not guaranteed for all the people in the People's Republic of China. Anti-revolutionary speech, for instance, is not expected to enjoy this freedom. A suspected anti-revolutionary speaker is to be investigated by the mass of the people; the opinions of the mass of the people are sought if the suspected person is to face trial as an anti-revolutionary. If the speech is considered counter-revolutionary, then the person is subject to the sanction of the proletarian dictatorship. If the case proves to be a mistake made within the ranks of the people, preferably debate, criticism, persuasion and education, instead of administrative ordinance or other coercive measures, are to be applied.⁷⁷

The freedom to strike listed in the catalog of other freedoms under the new Constitution is a political right as an extension of the masses' right to supervise all state organs.⁷⁸ It is not to be confused with the common notion of economic right that ordinarily would be used to improve the economic conditions of workers. The freedom to strike clause, which was inserted on the instructions of Mao Tsetung, is a political weapon, which is to correct errors of mass line and reprove the bureaucracy.⁷⁹ An analogous provision to the Chinese clause of freedom to strike may be found in the Right to Resist clause under the West German Constitution, which prescribes that "all Germans shall

75. *Id.* art. 13.

76. *Id.*

77. Yokota, *supra* note 8 at 397. See also Cheng Yueh, *supra* note 35, at 5-6.

78. *Supra* note 1, art. 28, para. 1.

79. *Supra* note 2, at 56.

have the right to resist any person or persons seeking to abolish that Constitutional order, should no other remedy be possible."⁸⁰

D. Ownership of the Means of Production

Provisions related to the property ownership scheme have been greatly changed as compared to the 1954 Constitution. The latter enumerated four kinds of ownership, namely by the whole people, collective ownership by working people, ownership by individual working people, and capitalist ownership.⁸¹ However, the new Constitution lists only the first two, not mentioning the last two forms of ownership.⁸² In other words, there are mainly two kinds of ownership, i.e., socialist ownership by the whole people and cooperative ownership. This change perhaps reflects the completion of the socialist transformation of ownership of the means of production. However, the Constitution guarantees the right of rural people's commune members to maintain small private farm lots and engage in limited household sideline production.⁸³ This reflects, according to the Report on the Revision of the Constitution, necessary flexibility in the pursuit of socialist goals.⁸⁴ Nonagricultural individual workers are allowed to exist legally, but they are subject to strict state regulations which direct them to engage in individual labor involving no exploitation of others under the supervision of neighborhood organizations in cities and towns or by production teams in rural people's communes.⁸⁵

E. Other Notable General Principles

An important general principle enunciated is "he who does not work, neither shall he eat," and "from each according to his ability, to each according to his work."⁸⁶ This principle of distribution is the vigorously restated version of the labor clause under the old Constitution which states that "work is a matter of honor for every citizen of the People's Republic of China who is able to work. The state encourages citizens to take an active and creative part in their work."⁸⁷ "From each according to his ability, to each according to his work"

80. GRUNDGESETZ art. 20, para. 4 (W. Ger. 1949; amended 1973).

81. *Supra* note 18, art. 5.

82. *Supra* note 5.

83. *Id.* art. 7, para. 3.

84. *Supra* note 2, at 57.

85. *Supra* note 1, art. 5.

86. *Id.* art. 9, para. 1.

87. *Supra* note 18, art. 16.

is not a Communist principle as dictated by Lenin. However, this general principle was laid down in light of actual conditions in China based on the main theory of Marxism and in order to follow the party's basic line in implementing the principle.⁸⁸ According to a mainland Chinese source, "Putting this principle of distribution into practice is a revolution in the history of the system of distribution in our country; it is a negation of the unreasonable phenomenon of man exploiting man based on thousands of years of private ownership with a few seizing the fruits of labor without working for them and the many gaining little or nothing for their labor."⁸⁹

"The state applies the principle of grasping revolution, promoting production and other work and preparedness against war" is a familiar political slogan which has often been repeated since the period of the Great Leap Forward Movement and during the Cultural Revolution.⁹⁰ The new Constitution converts this slogan into a general principle.⁹¹

Another significant principle relates to the status of the armed forces. As discussed earlier, the leadership of the Communist Party over the armed forces is clearly established. The Chairman of the Central Committee of the Communist Party becomes Commander-in-Chief of the armed forces.⁹² The People's Liberation Army is not only a fighting force, but also a working and production force.⁹³

IV. THE STRUCTURE OF THE STATE

While the 1954 Constitution had 64 articles under 6 sections to deal with the structure of the state,⁹⁴ the new Constitution has 10 articles under 5 sections: the National People's Congress, the State Council, the local People's Congresses, the local Revolutionary Committees, organs of self-government of national autonomous areas, and the judicial and procuratorial organs.⁹⁵

The National People's Congress is the highest organ of state power under the leadership of the Communist Party. Although the National People's Congress is supposed to hold one session every year, the session may be advanced or postponed, as has often been the case in the

88. Hsiao & Pin, *supra* note 8, at 11-12.

89. *Id.*, at 12.

90. Fukushima, *supra* note 8, at 81.

91. *Supra* note 1, art. 10.

92. *Id.* art. 15, para. 2.

93. *Id.* para. 3.

94. *Supra* note 18, arts. 21-84.

95. *Supra* note 1, arts. 16-24.

past.⁹⁶ The standing committee of the National People's Congress is the permanent organ.⁹⁷ The Constitution abolishes the post of the Chairman of the People's Republic of China,⁹⁸ which had been vacant since the Cultural Revolution. Thus, the Chairman of the standing committee of the National People's Congress is to become the formal head of state to perform such functions as receiving foreign ambassadors and heads of foreign states.⁹⁹ The term of the deputies of the National People's Congress is set for five years.¹⁰⁰ If the need arises, a certain number of persons are asked to serve as invited deputies.¹⁰¹ Deputies at all levels are elected through "democratic consultation."¹⁰² Democratic consultation could mean the screening process of selecting acceptable candidates through the display of initiative of the Communist Party and the wide and repeated debate by the mass of the people. Since one political party dominates in China, selection of candidates through the meetings of the mass of the people seems to be important. This Chinese process of selecting a candidate through democratic consultation is somewhat analogous to selection of a Democratic Party Candidate through a primary in some U.S. southern states; thus casting ballots at a general election is a mere formality. This process of democratic consultation is in accord with the Constitution of the Communist Party which dictates that "the leading bodies of the party at all levels shall be selected through democratic consultation. . . ." ¹⁰³

The State Council's primary function is to exercise unified leadership over the work of the ministries, commissions, and local organs of state at various levels in the People's Republic of China. The State Council has as its head the Premier and is accountable to the National People's Congress and its standing committee.¹⁰⁴

A rural people's commune is to function as an administrative unit, and is thus eligible to form a local people's congress.¹⁰⁵ A Chinese commune is not solely concerned with agricultural production like

96. *Id.* art. 16.

97. *Id.* art. 18.

98. *Supra* note 18, arts. 39-46.

99. *Supra* note 1, art. 18, para. 1.

100. *Id.* art. 16, para. 3.

101. *Id.* para. 2.

102. *Id.* art. 3, para. 3.

103. *Supra* note 4, art. 5.

104. *Supra* note 1, arts. 19-20.

105. *Id.* art. 21.

the Soviet Russian Kolkhozy, but is also an ideological and political unit designed to revolutionize the traditional Chinese way of life.¹⁰⁶

The local people's congresses are the counterparts of the National People's Congresses at the various local levels and have as their permanent organs the local revolutionary committees.¹⁰⁷ The local revolutionary committees are accountable to the People's Congress at the corresponding level and to the organ of state at the next level. The new Constitution makes the local revolutionary committees permanent organs at various levels by replacing local people's councils which were created under the 1954 Constitution.¹⁰⁸ Revolutionary committees are a product of the Cultural Revolution when the mass struggle called *Duo quan* was waged to form the local power structure. During this process the local revolutionary committees were represented by three elements: the revolutionary mass of the people, the revolutionary cadre, and the locally stationed people's revolutionary army.¹⁰⁹ Apparently, the framers of the Constitution intended that the spirit of the Cultural Revolution was to be embodied in the new Constitution through the institutionalization of the revolutionary committees. The function of the local revolutionary committee is, among other duties, to "lead the socialist revolution and socialist construction," and to "maintain revolutionary order . . ." ¹¹⁰

The organs of self-government of the national autonomous area are the people's congresses and revolutionary committees. These organs may also exercise autonomy within the limits prescribed by law.¹¹¹

V. FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

The fundamental rights and duties were spelled out in a total of 14 articles under the 1954 Constitution,¹¹² but they are condensed into 4 articles in the new Constitution.¹¹³ Rights included under the

106. Yeh, *Agricultural Policies and Performance*, in CHINA: A HANDBOOK 507 (Y. Wu ed., 1973). See also S. CHANDRA-SEKHAR, RED CHINA: AN ASIAN VIEW 38 (1961).

107. *Supra* note 1, art. 22.

108. *Supra* note 18, arts. 62-66.

109. Fukushima, *supra* note 8, at 81-82.

110. *Supra* note 1, art. 23.

111. *Id.* art. 24. See also K. KOTOV, AUTONOMY OF LOCAL NATIONALITIES IN THE CHINESE PEOPLE'S REPUBLIC (1960).

112. *Supra* note 1, arts. 85-103.

113. *Id.* arts. 26-29.

new Constitution are the right to vote, work, be educated, the right to material assistance in old age, and the right to lodge written complaints against any person working in any organ of state for transgression of law or neglect of duty.¹¹⁴ Other rights enumerated are freedom of speech, assembly, press, demonstration, and freedom to strike.¹¹⁵ Citizens have the right to religious freedom and the right to propagate atheism.¹¹⁶ Citizens cannot be arrested except by a decision of the People's Court or with the sanction of the public security organs. Rights of men and women are equal in every respect.¹¹⁷ The state is to extend its protection not only to marriage, the family, and the mother and child, but also to the just rights and interests of overseas Chinese.¹¹⁸ The new Constitution, unlike the old, states the rationale for guaranteeing fundamental rights. It declares that "the fundamental rights and duties of citizens are to support the leadership of the Communist Party of China, support the socialist system, and abide by the Constitution and the laws of the People's Republic of China."¹¹⁹ This provision sounds more rigid as compared to its counterpart in the U.S.S.R. Constitution, which guarantees a list of freedoms "in order to meet the interests of workers and solidify the system."¹²⁰

VI. JUSTICE

In studying Chinese socialist law we are entering a highly speculative area made doubly so by the unavailability of source materials and the recentness of the events involved. For more than two decades various foundations in the United States have pumped large sums of money into academia so that a clearer picture of the justice delivery system of mainland China could be drawn. However, the picture is still obscure. Studies of socialist Chinese legal practices are incomplete.

After it seized power in 1949, the Chinese socialist regime repealed all the laws of the Nationalist government because, according to the Communist regime, those laws represented the interests of feudal society and the bourgeoisie.¹²¹ Nationalist laws, however, were replaced

114. *Id.* art. 27.

115. *Id.* art. 28.

116. *Id.*

117. *Id.* para. 2.

118. *Id.* art. 27, paras. 3, 4, 5.

119. *Id.* art. 26, para. 1.

120. Constitution of USSR, *supra* note 54, art. 125.

121. G. JAN, GOVERNMENT OF COMMUNIST CHINA 306-7 (1966).

not by new codes, but by a mixture of statutes, rules, decrees, orders, and Communist Party resolutions and guidelines.¹²² These are designed to insure maximum discretion for the regime's leadership. Although some important statutes such as the marriage law, labor law, and the land reform law have been enacted by the socialist regime since 1949,¹²³ Communist China has not had a comprehensive civil or criminal code nor has it had a standard legal procedure. The official Communist explanation for the incompleteness of the legal codes and procedures is that rigid laws should not be enacted prematurely because of the continued economic and political developments in mainland China.¹²⁴

The 1954 Constitution contained 12 articles to deal with the people's courts and people's procuratorates.¹²⁵ The Constitution maintained that the people's courts are independent and subject only to the law administering justice,¹²⁶ that the accused has a right to a defense,¹²⁷ and that cases are ordinarily to be heard in public.¹²⁸ Citizens are said to be equal before the law¹²⁹ and a citizen cannot be arrested except by a decision of a people's court or with the sanction of a people's procuratorate.¹³⁰ The procuracy under the 1954 Constitution was a very influential state organ.¹³¹ The chief procurator was independent of both the Supreme People's Court and the State Council.¹³² He was directly accountable to the National People's Congress and its standing committee.¹³³ The main function of the procuracy was to supervise the enforcement of law.¹³⁴ It had jurisdiction over all ministries of the State Council, all local state organs, and all citizens and served as state prosecutor with the power to pro-

122. S. Asai, *supra* note 21.

123. M. FUKUSHIMA, CHUGOKU NO HO TO SEIJI 83 (1966). For an English text of these laws, see SELECTED LEGAL DOCUMENTS OF THE PEOPLE'S REPUBLIC OF CHINA 249-564 (E. Wang, ed. 1976).

124. G. JAN, *supra* note 121, at 307.

125. *Supra* note 18, arts. 73-84.

126. *Id.* art. 78.

127. *Id.* art. 76.

128. *Id.*

129. *Id.* art. 85.

130. *Id.* art. 89.

131. *Id.* arts. 81-84. For a discussion of the people's procuratorates under the 1954 Constitution, see Ginsburgs & Stahnke, *The Genesis of the People's Procuratorates in Communist China, 1949-51*, 21 CHINA QUARTERLY 1 (1964); McKee, *Commentary on the Chinese People's Procuratorates*, 7 J. OF INT'L L. AND ECON. 71 (1972).

132. *Supra* note 18, arts. 81, 84.

133. *Id.* art. 84.

134. *Id.* art. 81.

test decisions of the courts.¹³⁵ Politically speaking, the procuracy was more important to the party than the courts. The concept of the independent procuracy was ostensibly imported from Soviet Russia.¹³⁶

The judicial clause under the 1975 Constitution is in the simplest style, yet with flexible contents. The Constitution deals with the subject area of justice with only one article under the heading of "The Judicial Organs and the Procuratorial Organs." It reads:

The Supreme People's Court, local people's courts at various levels and special people's courts exercise judicial authority. The people's courts are responsible and accountable to the people's congresses and their permanent organs at the corresponding levels. The presidents of the people's courts are appointed and subject to removal by the permanent organs of the people's congresses at the corresponding levels.

The functions and powers of procuratorial organs are exercised by the organs of public security at various levels.

The mass line must be applied in procuratorial work and in trying cases. In major counter-revolutionary criminal cases the masses should be mobilized for discussion and criticism.¹³⁷

People's courts are responsible to the people's congresses and their permanent organs at the corresponding levels. Thus, the Supreme People's Court, for instance, is responsible to the National People's Congress, or its standing committee if the National People's Congress is not in session. Notable changes in the area of judicial administration brought by the 1975 Constitution could be illustrated in two instances. The first is the abolishment of the people's procuratorates, the second, the emphasis on the mass line style of work in the administration of justice.

The independent entity of the people's procuratorates has disappeared. Such ordinary procuratorial business as issuance of an arrest warrant, decision to prosecute, the pursuit of prosecution, and inspection of labor remolding are to be performed by the organs of public security at various levels. As discussed earlier, the 1954 Constitution granted the people's procuratorates a general and independent supervisory power "over all departments of the State Council, all local organs of state, persons working in organs of state, and citizens, to insure the observance of the law."¹³⁸ This power generated vertical

135. *Id.*

136. Ginsburgs & Stahnke, *supra* note 129. This concept is still maintained in articles 163-167 of the draft Constitution. For an English translation of the text, see *supra* note 54, at 22.

137. *Supra* note 1, art. 25.

138. *Supra* note 18, art. 81.

leadership, thus achieving a complete independence of the procuracy both from other state organs and in exercising authority and responsibility emanating from the higher levels of procuratorates to those below. This arrangement was supposedly to serve as a check and balance among three powers, i.e., public security, procuratorial and judicial organs. However, the people's procuratorates became a target of severe criticism, especially during the Cultural Revolution. As early as February 1967, it was reported that Mao Tse-tung instructed the examination of the independent procuracy because it tended to create a procuracy kingdom, thus becoming a stumbling block to the cause of the socialist revolution.¹³⁹ The abolishment of people's procuratorates under the new Constitution brings at least four benefits for the Chinese leadership. First, the reform opens the avenues for the mass of the people to be involved in procuratorial work. Second, it solidifies the single line of leadership by the Communist Party in the procuratorial process. Third, the merger of the procuratorates into the organs of public security would promote "the principle of efficient and simple administration."¹⁴⁰ Fourth, elimination of the people's procuratorates means freedom from the Soviet Russian heritage.

The new Constitution also emphasizes the need for mass line in procuratorial work and in trying cases. This Maoist concept stresses the eliciting of truth in a case through involvement of persons who had knowledge of the crime, neighbors, or fellow-workers of the suspect. The Constitution intends to bring mystic inspirational and political powers of the mass of the people into the judicial processes. The mass line style of judicial work signifies that a forum is created at the convenience of the mass of the people and judicial proceedings at all levels are informal with the maximum participation of the masses.¹⁴¹ Thus, criminal cases are tried where the crime was committed if the place proves to be convenient for the mass of the people,¹⁴² while civil cases are solved by the official or non-official visitors to the parties concerned.¹⁴³ Relevant facts related to cases are collected on the initiative of the mass of the people.¹⁴⁴ Judicial policies are drafted based on the gathered facts and the opinions of the

139. Asai, *supra* note 8, at 9. See also Asai, *Kensatzukan: Chukogu*, 38 HAKAHO KENKYU 160 (1977).

140. *Supra* note 1, art. 11, para. 2.

141. S. ASAI, *GENDAI CHUGOKU HO NO RIRON* 55 (1973).

142. S. HARIU, *CHUGOKU NO KOKA TO HO* 44 (1970).

143. *Id.*, at 49.

144. Hariu, *Chugoku shin kenpo ka no saiban seido* (The Judicial System under the New Constitution), 602 JURISUTO 124, 126 (1975).

masses and subject to the sequential scrutiny of the mass of the people.¹⁴⁵ Formulated judicial policies are disseminated to obtain "patient persuasion and education" and eventually conscious and voluntary action of the masses in the execution and supervision of the implementation of policies.¹⁴⁶ The view of the mass of the people can be seen in the disposal of cases, which is skillfully interwoven with party ideology, and in the guidelines for legal procedures, which are completely free of legal formalism. Thus, the assertion that law is a special business for the legal profession based on the primacy-of-law idea has no place in the Chinese socialist legal order. Chinese socialist law is created by the body of the mass of the people who are the dynamics in history, the producers of all cultural tradition, and the source of all material riches.¹⁴⁷ Judicial administrators are to articulate the truth which is already in existence in the minds of the mass of the people.

The mass line style of judicial work seems to have a number of merits in the eyes of state policy makers. First, judicial proceedings do not disturb the life of ordinary citizens who are engaged in the pursuit of socialist production. Second, cases are tried rapidly with the convenient election of a forum while evidence is fresh. Third, quick arraignment of the accused could be achieved through persuasion and debate of the co-workers, neighbors, and relatives. Fourth, the educational effects on the mass of the people who participate in the trial are calculated and the mass of the people themselves become aware that they are the executors and the supervisors of the judicial decisions. Fifth, active participation of the mass of the people in judicial administration creates a constant reminder to the judicial administrators that they are not masters of the mass of the people, but co-seekers of the truth.

The Chinese socialist courts play educational and propaganda roles in addition to their judicial duties. As discussed earlier, special emphasis is placed on the mass line, including, among other things, the trial of cases in the presences of the masses so that the whole legal proceeding may serve educational and propaganda purposes. Educational and propaganda roles are especially salient in the case

145. *Id.*

146. *Id.*, at 127. Thus, antithetical to Chinese revolutionary justice are the principles of *nemo iudex sine actore*; blind worship for rules, authority, and judges; judicial aloofness and isolationism; mystification of law; and stability and predictability as elements of law.

147. J. TOWNSEND, *supra* note 34, at 72.

of trying anti-revolutionaries as dictated by the new Constitution.¹⁴⁸ The mobilization of the masses in selected counter-revolutionary criminal cases refers to the widespread discussion of exemplary crimes as a means of educating the public and deterring them from such behavior. In this setting Chinese judges are expected not only to hear and decide a case, but also to assume roles of educator and propagandist.

As noted earlier, the distance that has yet to be covered before learning "the whole truth" about Chinese socialist law is considerable. However, reported accounts made by recent foreign visitors to the People's Republic of China are useful in learning the reality of justice in mainland China.¹⁴⁹ According to these accounts there are now three kinds of courts in addition to the Supreme People's Court. High courts are installed in each province, autonomous region, and such special administrative districts as Shanghai and Peking. Next are intermediate courts in regions and cities. The courts of the lowest instance are located in counties, in independent towns, and in wards of large cities.¹⁵⁰ Foreign visitors' reports that the author was able to peruse are still sketchy, but we can gain a glimpse of the Chinese socialist style of judicial operation by focusing on three areas: criminal trials and the penal system, civil cases, and legal counseling.

A. Criminal Trials and the Penal System

The prosecution and trial of a person stealing raw materials in a factory, for instance, are to take the following steps:¹⁵¹ first, a revolutionary committee of the factory with the cooperation of the factory workers conducts an investigation and reports the results of the in-

148. *Supra* note 1, art. 25, para. 3. For an analysis of how the Chinese Socialists handled counterrevolutionaries during the Kiangsi Soviet as well as during the Yenan and the Civil War eras, and the implications of this process for post-1949 history, see GRIFFIN, *THE CHINESE COMMUNIST TREATMENT OF COUNTERREVOLUTIONARIES, 1924-1949* (1976).

149. For this article, the following reports were consulted: Harago, *Chugoku no keiji saiban o bocho site* (Sitting in the Criminal Trial of China) 47 *HONRSU JIMO* 112 (1975); Hariu, *supra* note 144; Jones & Ruge, *Crime and Punishment in China*, 22 *ATLAS* 19 (1975); Ruge, *Report from China: An Interview with Chinese Legal Officials*, 61 *CHINA QUARTERLY* 118 (1975) (This report came out of a West German reporter's three hour interview with the President and staff members of the Kwangtung Provincial Institute of Political Science); Woodsworth, *Family Law and Resolution of Domestic Disputes in the People's Republic of China*, 13 *MCGILL L. J.* 169 (1967); Yokota, *supra* note 8.

150. Hariu, *supra* note 144, at 125; Ruge, *supra* note 149, at 120; Yokota, *supra* note 8, at 404-05.

151. Hariu, *supra* note 144, at 126-27; Yokota, *supra* note 8, at 406-07.

vestigation to the public security organ; second, the public security organ conducts its own investigation based on the factory report and the accused is detained if necessary; third, the thought and behavior of the accused are scrutinized and, if it is found to be feasible, he is re-educated at this step; fourth, a public criticism meeting, known as *Pi dou hui*, is convened if the case proves to be of educational significance to the public. The meeting is to take place in the factory to condemn the wrongdoer's crime or provide him with a chance to denounce his crime publicly and demonstrate his repentance. If the public security organ turns over a case for adjudication by the people's court, the court conducts its own investigation with the cooperation of the factory revolutionary committee and begins to weigh the gathered evidence. If the need arises, a public criticism meeting is called. When all the facts have been established and evidence has been secured the court is again to seek the opinions of the masses in its deliberation of the case in the factory before trying to arrive at the sentence on the basis of present regulations or party guidelines. If the court considers that the case has special educational merit, it may publicize the result of its investigation in the factory. It may also institute mass discussion concerning the circumstances of the crime, its political significance, and concerning the question of appropriate punishment. The court will then analyze the results of the discussion and give them due consideration in the process of arriving at the verdict.¹⁵²

All courts have the authority to hand out any possible sentence from a prison term to capital punishment. When a criminal is sentenced to the death penalty, a serious consultation between a party committee of a people's court and the leaders of a public trial ensues and the case is to be reported to the Supreme People's Court. Even if capital punishment is affirmed at the highest level, the execution of the death penalty may be avoided if educational remolding is appropriate and is successful.¹⁵³

In cases other than capital punishment, the sentence is final after the decision of the court at the second instance. Appeals should be taken to an intermediate court within ten days after a case is decided in the lowest court and to a high court when it is decided in an

152. Court proceedings in China usually do not take place in a courthouse but are held publicly in factories, people's communes, or neighborhood localities. See Harago, *supra* note 149, who reports that a criminal trial was conducted in a hospital.

153. Kim, *Asian Criminal Law*, 14 *SOUTH TEXAS L. J.* 43, 67-68 (1973). See also Kim & LeBlang, *The Death Penalty in Traditional China*, 5 *GEORGIA J. OF INT'L. AND COMP. L.* 77 (1975).

intermediate court. A special appeal may also be applied for in cases in which the period for the normal appeal of ten days has expired. A person on whom sentence has been passed by an appellate court must start serving his sentence immediately. However, he may direct an appeal for retrial to the court of next higher level from wherever he is serving his sentence, usually a labor camp. When the sentence is finalized, criminals are sent to prison where they are remolded through labor. When imprisonment is unnecessary, criminals are put on probation and are re-educated by supervisory teams organized by the mass of the people.¹⁵⁴

The spectrum of penalties is very broad in China. They stretch from surveillance by the masses, a kind of civil degradation for a maximum of three years, to sentencing the criminal to a labor camp, mostly of the agricultural type, to re-education, and finally to the death penalty.¹⁵⁵ Undoubtedly, the idea of re-education ranks highest, be it by placing a first offender under surveillance of the neighborhood organization for an offense of stealing property, or by sentencing a person to a lengthy prison term for repeated serious crimes. The prisoner may have his sentence reduced or he may be granted amnesty while serving his sentence. This is a characteristic of the Chinese justice system which could not be pinned down in any written legal context. It also explains why a sentence that cannot be revised, such as, for example, the death penalty, is seldom carried out.¹⁵⁶ A firm belief in the ability of the masses to re-educate ordinary criminals and political dissenters is fundamental to the Chinese socialist penal system.

If the excitement of the masses should abate, there is always, even in the case of the death sentence, the possibility that the requirements of justice can be satisfied by assigning the criminal to a re-education camp.

B. Civil Cases

In solving civil cases, a guideline of settling contradictions among the people themselves is observed.¹⁵⁷ The concept considered under this guideline, namely, persuasion and education, is "primarily conciliation" (*Tiao jie wei zhu*).¹⁵⁸ To implement this guideline, con-

154. Hariu, *supra* note 144, at 127; Yokota, *supra* note 8, at 406-07.

155. Hariu, *supra* note 144, at 126-27.

156. Kim, *supra* note 153, at 67-68.

157. Fukushima, *supra* note 123, at 187.

158. Hariu, *supra* note 142, at 49.

ciliation committees function actively. Committees seek to secure a propitiatory settlement of civil disputes, including conflicts in domestic relations, by recommending a mutually satisfactory compromise to the parties concerned or by persuading the parties to reconcile themselves to an appropriate plan of compromise worked out by the committee. In this setting, the masses are to play a key role, engaging in investigation, encouraging cases to be resolved on the spot, and emphasizing out-of-court settlements. In addition to the normal function of conciliation, the committee is also to assume the ideological and political role of carrying out thought remolding and dissemination of governmental policies. Ostensibly, the people's courts supervise conciliation committees, but actually the people's courts and conciliation committees share their experience, study cases, and work out an appropriate plan together.¹⁵⁹

If there is a case involving factory workers who are husband and wife and have marital problems, the case is settled by the mass organization of the factory instead of the conciliation committee. However, the case is to be resolved by means of conciliation. If the result of conciliation is not satisfactory, the case can be brought to the people's court and an appeal from the court decision is also possible as discussed earlier in the case of criminal trials.¹⁶⁰

C. Legal Counselling

It is commonly thought that an accused has no right to counsel in the People's Republic of China. However, it is reported that the right to counsel by the family members and friends of the accused does exist. In the case of elderly, deaf, or mute persons, it is permissible to have their relatives, or factory and commune representatives from the place of their employment, speak for them. One of the reasons for the disappearance of the system of professional legal advocates is that every Chinese is considered capable of speaking for himself. A conscious effort has been made to simplify the archaic language in order to make the party guidelines intelligible and readable to everyone. The literacy rate has been raised dramatically.¹⁶¹ Traditionally, the legal profession has occupied a low status in China. Indeed, there is a strong attempt to have people avoid any court adjudication. The emphasis on conciliation encourages local groups to

159. Yokota, *supra* note 8, at 406-08; Hariu, *supra* note 144, at 127-28. See also Woodsworth, *supra* note 149, at 174-75.

160. Hariu, *supra* note 144, at 127-28; Yokota, *supra* note 8, at 407-08.

161. Hariu, *supra* note 144, at 127; Yokota, *supra* note 8, at 407.

deal with their own affairs without the assistance of professional legal counsel.

VII. CONCLUSION

The foregoing presentation indicates that in its simple style and organization the 1975 Constitution seems to have unique approaches to Chinese socialist statecraft. The Constitution emphasizes the past successes and experiences of socialist China and sets guidelines for future courses of action. It formalizes the political changes found in Mainland China since the adoption of the 1954 Constitution, and especially since the Cultural Revolution. The overriding concern in undertaking the 1975 constitutional revision is to reaffirm in document form the theory of continued revolution under the proletarian dictatorship and to inject Marxism-Leninism-Mao Tse-tung thought into the Constitution, thus firmly enshrining the thought of Mao Tse-tung without personally glorifying him. It also reflects, in part, the widening ideological rift between the People's Republic of China and the USSR. It should be a matter of great interest to scholars to follow the history of this Constitution in post-Mao-Tse-tung China. The application and interpretation of this Constitution may ultimately provide clues about the degree to which Mao Tse-tung thought is based on the personality of its promulgator, and the degree to which it represents the ongoing course of socialism in mainland China.

APPENDIX

THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted on January 17, 1975, by the Fourth National People's Congress
of the People's Republic of China at its First Session)

PREAMBLE

The founding of the People's Republic of China marked the great victory of the new-democratic revolution and the beginning of the new historical period of socialist revolution and the dictatorship of the proletariat, a victory gained only after the Chinese people had waged a heroic struggle for over a century and, finally, under the leadership of the Communist Party of China, overthrown the reactionary rule of imperialism, feudalism and bureaucrat-capitalism by a people's revolutionary war.

For the last twenty years and more, the people of all nationalities in our country, continuing their triumphant advance under the leadership of the Communist Party of China, have achieved great victories both in socialist revolution and socialist construction and in the Great Proletarian Cultural Revolution, and have consolidated and strengthened the dictatorship of the proletariat.

Socialist society covers a considerably long historical period. Throughout this historical period, there are classes, class construction and class struggle, there is the struggle between the socialist road and the capitalist road, there is the danger of capitalist restoration and there is the threat of subversion and aggression by imperialism and social-imperialism. These contradictions can be resolved only by depending on the theory of continued revolution under the dictatorship of the proletariat and on practice under its guidance.

We must adhere to the basic line and policies of the Communist Party of China for the entire historical period of socialism and persist in continued revolution under the dictatorship of the proletariat, so that our great motherland will always advance along the road indicated by Marxism-Leninism-Mao Tsetung Thought.

We should consolidate the great unity of the people of all nationalities led by the working class and based on the alliance of workers and peasants, and develop the revolutionary united front. We should correctly distinguish contradictions among the people from those between ourselves and the enemy and correctly handle them. We should carry on the three great revolutionary movements of class struggle, the struggle for production and scientific experiment, we should build socialism independently and with the initiative in our hands, through self-reliance, hard struggle, diligence and thrift and by going all out, aiming high and achieving greater, faster, better and more economical results, and we should be prepared against war and natural disasters and do everything for the people.

In international affairs, we should uphold proletarian internationalism. China will never be a superpower. We should strengthen our unity with the socialist countries and all oppressed people and oppressed nations, with each supporting the other; strive for peaceful coexistence with countries having different social systems on the basis of the Five Principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence, and oppose the imperialist and social-imperialist policies of aggression and war and oppose the hegemonism of the superpowers.

The Chinese people are fully confident that, led by the Communist Party of China, they will vanquish enemies at home and abroad and surmount all difficulties to build China into a powerful socialist state of the dictatorship of the proletariat so as to make a greater contribution to humanity.

People of all nationalities in our country, unite to win still greater victories!

CHAPTER ONE

GENERAL PRINCIPLES

Article 1

The People's Republic of China is a socialist state of the dictatorship of the proletariat led by the working class and based on the alliance of workers and peasants.

Article 2

The Communist Party of China is the core of leadership of the whole Chinese people. The working class exercises leadership over the state through its vanguard, the Communist Party of China.

Marxism-Leninism-Mao Tsetung Thought is the theoretical basis guiding the thinking of our nation.

Article 3

All power in the People's Republic of China belongs to the people. The organs through which the people exercise power are the people's congresses at all levels, with deputies of workers, peasants and soldiers as their main body.

The people's congresses at all levels and all other organs of state practice democratic centralism.

Deputies to the people's congresses at all levels are elected through democratic consultation. The electoral units and electors have the power to supervise the deputies they elect and to replace them at any time according to provisions of law.

Article 4

The People's Republic of China is a unitary multi-national state. The

areas where regional national autonomy is exercised are all inalienable parts of the People's Republic of China.

All the nationalities are equal. Big-nationality chauvinism and local-nationality chauvinism must be opposed.

All the nationalities have the freedom to use their own spoken and written languages.

Article 5

In the People's Republic of China, there are mainly two kinds of ownership of the means of production at the present stage: socialist ownership by the whole people and socialist collective ownership by working people.

The state may allow non-agricultural individual labourers to engage in individual labour involving no exploitation of others, within the limits permitted by law and under unified arrangement by neighbourhood organizations in cities and towns or by production teams in rural people's communes. At the same time, these individual labourers should be guided onto the road of socialist collectivization step by step.

Article 6

The state sector of the economy is the leading force in the national economy.

All mineral resources and waters as well as the forests, undeveloped land and other resources owned by the state are the property of the whole people.

The state may requisition by purchase, take over for use, or nationalize urban and rural land as well as other means of production under conditions prescribed by law.

Article 7

The rural people's commune is an organization which integrates government administration and economic management.

The economic system of collective ownership in the rural people's communes at the present stage generally takes the form of three-level ownership with the production team at the basic level, that is ownership by the commune, the production brigade and the production team, with the last as the basic accounting unit.

Provided that the development and absolute predominance of the collective economy of the people's commune are ensured, people's commune members may farm small plots for their personal needs, engage in limited household side-line production, and in pastoral areas keep a small number of livestock for their personal needs.

Article 8

Socialist public property shall be inviolable. The state shall ensure the consolidation and development of the socialist economy and prohibit any person from undermining the socialist economy and the public interest in any way whatsoever.

Article 9

The state applies the socialist principle: "He who does not work, neither shall he eat" and "From each according to his ability, to each according to his work."

The state protects the citizens' right of ownership to their income from work, their savings, their houses, and other means of livelihood.

Article 10

The state applies the principle of grasping revolution, promoting production and other work and preparedness against war; promotes the planned and proportionate development of the socialist economy, taking agriculture as the foundation and industry as the leading factor and bringing the initiative of both the central and the local authorities into full play; and improves the people's material and cultural life step by step on the basis of the constant growth of social production and consolidates the independence and security of the country.

Article 11

State organizations and state personnel must earnestly study Marxism-Leninism-Mao Tsetung Thought, firmly put proletarian politics in command, combat bureaucracy, maintain close ties with the masses and wholeheartedly serve the people. Cadres at all levels must participate in collective productive labour.

Every organ of state must apply the principle of efficient and simple administration. Its leading body must be a three-in-one combination of the old, the middle-aged and the young.

Article 12

The proletariat must exercise all-round dictatorship over the bourgeoisie in the superstructure, including all spheres of culture. Culture and education, literature and art, physical education, health work and scientific research work must all serve proletarian politics, serve the workers, peasants and soldiers, and be combined with productive labour.

Article 13

Speaking out freely, airing views fully, holding great debates and writing big-character posters are new forms of carrying on socialist revolution created by the masses of the people. The state shall ensure to the masses the right to use these forms to create a political situation in which there are both centralism and democracy, both discipline and freedom, both unity of will and personal ease of mind and liveliness, and so help consolidate the leadership of the Communist Party of China over the state and consolidate the dictatorship of the proletariat.

Article 14

The state safeguards the socialist system, suppresses all treasonable and counter-revolutionary activities and punishes all traitors and counter-revolutionaries.

The state deprives the landlords, rich peasants, reactionary capitalists and other bad elements of political rights for specified periods of time according to law, and at the same time provides them with the opportunity to earn a living so that they may be reformed through labour and become law-abiding citizens supporting themselves by their own labour.

Article 15

The Chinese People's Liberation Army and the people's militia are the workers' and peasants' own armed forces led by the Communist Party of China; they are the armed forces of the people of all nationalities.

The Chairman of the Central Committee of the Communist Party of China commands the country's armed forces.

The Chinese People's Liberation Army is at all times a fighting force, and simultaneously a working force and a production force.

The task of the armed forces of the People's Republic of China is to safeguard the achievements of the socialist revolution and socialist construction, to defend the sovereignty, territorial integrity and security of the state, and to guard against subversion and aggression by imperialism, social-imperialism and their lackeys.

CHAPTER TWO

THE STRUCTURE OF THE STATE

Section 1

The National People's Congress

Article 16

The National People's Congress is the highest organ of state power under the leadership of the Communist Party of China.

The National People's Congress is composed of deputies elected by the provinces, autonomous regions, municipalities directly under the Central Government, and the People's Liberation Army. When necessary, a certain number of patriotic personages may be specially invited to take part as deputies.

The National People's Congress is elected for a term of five years. Its term of office may be extended under special circumstances.

The National People's Congress holds one session each year. When necessary, the session may be advanced or postponed.

Article 17

The functions and powers of the National People's Congress are: to amend the Constitution, make laws, appoint and remove the Premier of the State Council and the members of the State Council on the proposal of the Central Committee of the Communist Party of China, approve the national economic plan, the state budget and the final state accounts, and

exercise such other functions and powers as the National People's Congress deems necessary.

Article 18

The Standing Committee of the National People's Congress is the permanent organ of the National People's Congress. Its functions and powers are: to convene the sessions of the National People's Congress, interpret laws, enact decrees, dispatch and recall plenipotentiary representatives abroad, receive foreign diplomatic envoys, ratify and denounce treaties concluded with foreign states, and exercise such other functions and powers as are vested in it by the National People's Congress.

The Standing Committee of the National People's Congress is composed of the Chairman, the Vice-Chairman and other members all of whom are elected and subject to recall by the National People's Congress.

Section II

The State Council

Article 19

The State Council is the Central People's Government. The State Council is responsible and accountable to the National People's Congress and its Standing Committee.

The State Council is composed of the Premier, the Vice-Premiers, the ministers, and the ministers heading commissions.

Article 20

The functions and powers of the State Council are: to formulate administrative measures and issue decisions and orders in accordance with the Constitution, laws and decrees; exercise unified leadership over the work of ministries and commissions and local organs of state at various levels throughout the country; draft and implement the national economic plan and the state budget; direct state administrative affairs; and exercise such other functions and powers as are vested in it by the National People's Congress or its Standing Committee.

Section III

The Local People's Congresses and the Local Revolutionary Committees at Various Levels

Article 21

The local people's congresses at various levels are the local organs of state power.

The people's congresses of provinces and municipalities directly under the Central Government are elected for a term of five years. The people's congresses of prefectures, cities and counties are elected for a term of three years. The people's congresses of rural people's communes and towns are elected for a term of two years.

Article 22

The local revolutionary committees at various levels are the permanent organs of the local people's congresses and at the same time the local people's governments at various levels.

Local revolutionary committees are composed of a chairman, vice-chairman and other members, who are elected and subject to recall by the people's congress at the corresponding level. Their election or recall shall be submitted for examination and approval to the organ of state at the next higher level.

Local revolutionary committees are responsible and accountable to the people's congress at the corresponding level and to the organ of state at the next higher level.

Article 23

The local people's congresses at various levels and the local revolutionary committees elected by them ensure the execution of laws and decrees in their respective areas; lead the socialist revolution and socialist construction in their respective areas; examine and approve local economic plans, budgets and final accounts; maintain revolutionary order; and safeguard the rights of citizens.

Section IV

The Organs of Self-Government of National Autonomous Areas

Article 24

The autonomous regions, autonomous prefectures and autonomous counties are all national autonomous areas; their organs of self-government are people's congresses and revolutionary committees.

The organs of self-government of national autonomous areas, apart from exercising the functions and powers of local organs of state as specified in Chapter Two, Section III of the Constitution, may exercise autonomy within the limits of their authority as prescribed by law.

The higher organs of state shall fully safeguard the exercise of autonomy by the organs of self-government of national autonomous areas and actively support the minority nationalities in carrying out the socialist revolution and socialist construction.

Section V

The Judicial Organs and the Procuratorial Organs

Article 25

The Supreme People's Court, local people's courts at various levels and special people's courts exercise judicial authority. The people's courts are responsible and accountable to the people's congresses and their permanent organs at the corresponding levels. The presidents of the people's courts are

appointed and subject to removal by the permanent organs of the people's congresses at the corresponding levels.

The functions and powers of procuratorial organs are exercised by the organs of public security at various levels.

The mass line must be applied in procuratorial work and in trying cases. In major counter-revolutionary criminal cases the masses should be mobilized for discussion and criticism.

CHAPTER THREE

THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

Article 26

The fundamental rights and duties of citizens are to support the leadership of the Communist Party of China, support the socialist system and abide by the Constitution and the laws of the People's Republic of China.

It is the lofty duty of every citizen to defend the motherland and resist aggression. It is the honourable obligation of citizens to perform military service according to law.

Article 27

All citizens who have reached the age of eighteen have the right to vote and stand for election, with the exception of persons deprived of these rights by law.

Citizens have the right to work and the right to education. Working people have the right to rest and the right to material assistance in old age and in case of illness or disability.

Citizens have the right to lodge to organs of state at any level written or oral complaints of transgression of law or neglect of duty on the part of any person working in an organ of state. No one shall attempt to hinder or obstruct the making of such complaints or retaliate.

Women enjoy equal rights with men in all respects.

The state protects marriage, the family, and the mother and child.

The state protects the just rights and interests of overseas Chinese.

Article 28

Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.

The citizens' freedom of person and their homes shall be inviolable. No citizen may be arrested except by decision of a people's court or with the sanction of a public security organ.

Article 29

The People's Republic of China grants the right of residence to any foreign national persecuted for supporting a just cause, for taking part in revolutionary movements or for engaging in scientific activities. . . .

